

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KYLE LYDELL CANTY,

**Plaintiff,**

Case No. C16-1655-RAJ-JPD

V.

CITY OF SEATTLE, *et al.*,

## Defendants.

**ORDER STRIKING/DENYING  
PLAINTIFF'S PENDING MOTIONS  
AND STRIKING IMPROPER  
SUBMISSIONS**

This is a civil rights action proceeding under 42 U.S.C. § 1983. This matter comes before

the Court at the present time on six of plaintiff's pending motions: (1) Motion Pursuant to LCR 26(a), (c), (f) Duty to Disclose; (2) Motion Pursuant to LCR 16 Pretrial Conferences Scheduling Management; (3) Motion Pursuant to Rule 5.1 (FRCP) Constitutional Challenge to a Statute; (4) Motion Pursuant to Rule 51 (FRCP) Instructions to the Jury; (5) Motion Pursuant to "Under Color of Law" Definition; and, (6) Second Motion Pursuant to Rule 5.1 (FRCP) Constitutional Challenge to a Statute. (Dkts. 61, 62, 63, 69, 70 and 76.) Defendants have filed responses addressing all but plaintiff's most recent motion. (See Dkts 72 and 74.) The Court, having

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1 reviewed plaintiff's motions, and the balance of the record, hereby finds and ORDERS as  
2 follows:

3 (1) Plaintiff's Motion Pursuant to LCR 26(a), (c), (f) Duty to Disclose (Dkt. 61) and  
4 plaintiff's Motion Pursuant to LCR 16 Pretrial Conferences Scheduling Management (Dkt. 62)  
5 are STRICKEN. Plaintiff fails to identify in either of these motions the relief he is seeking, the  
6 motions therefore do not comply with Fed. R. Civ. P. 7(b)(1)(C), and, thus, the Court need not  
7 address the motions further.

8 (2) Plaintiff's Motion Pursuant to Rule 5.1 (FRCP) Constitutional Challenge to a  
9 Statute (Dkt. 63) is DENIED. Plaintiff indicates in the instant motion that he is seeking to  
10 challenge the constitutionality of Chapter 71 of the Revised Code of Washington, that which  
11 addresses mental illness, because defendants "are able to knowingly, intentionally, maliciously,  
12 and willfully manipulate this chapter at will to gain the County of King and the City of Seattle  
13 revenue from the federal government." (*Id.* at 2-3.) As defendants correctly note in their  
14 responses to plaintiff's motion, plaintiff did not allege any claim in his second amended  
15 complaint challenging the constitutionality of Chapter 71 and, thus, the issue is not properly  
16 before the Court at this juncture. (*See* Dkt. 72 at 2; Dkt. 74 at 4.) If plaintiff wishes to add  
17 claims to this action he must file a motion for leave to amend his complaint, and that motion  
18 must be accompanied by a proposed amended complaint.

19 (3) Plaintiff's Motion Pursuant to Rule 51 (FRCP) Instructions to the Jury (Dkt. 69) is  
20 STRICKEN as premature. This case is still in its preliminary stages. Defendants only recently  
21 filed their answers to plaintiff's second amended complaint, and a pretrial schedule has yet to be  
22

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1 established. Assuming this case proceeds to trial at some future time, there will be ample  
2 opportunity for the parties to propose appropriate jury instructions.

3 (4) Plaintiff's Motion Pursuant to "Under Color of State Law" Definition (Dkt. 70) is  
4 DENIED. Plaintiff appears to take issue with a sentence in the City of Seattle defendants'  
5 answer to plaintiff's second amended complaint wherein defendants indicated that whether  
6 defendants acted "under color of State law" was not an averment of fact that required an answer.  
7 (See Dkt. 60 at 2.) Plaintiff asks that the Court provide all defendants with a legal definition of  
8 "under color of State law" for reasons that are not at all clear from plaintiff's motion. No  
9 defendant has contested the proper definition of this legal term, and any dispute as to whether  
10 this legal element has been met with respect to the claims asserted by plaintiff in his second  
11 amended complaint is more properly addressed in the context of a dispositive motion.

12 (5) Plaintiff's Second Motion Pursuant to Rule 5.1 (FRCP) Constitutional Challenge  
13 to a Statute (Dkt. 76) is DENIED. While plaintiff indicates in this motion that he is seeking to  
14 challenge the constitutionality of another state statute, it appears that he is actually seeking to  
15 challenge superior court criminal rules and the effect those rules had on his most recent arrest  
16 and prosecution. Plaintiff's second amended complaint does not present any claims pertaining to  
17 plaintiff's most recent arrest and prosecution, his claims pertain solely to a previous arrest and  
18 prosecution. Plaintiff is once again attempting to insert claims into this action which were not  
19 alleged in his second amended complaint. As noted above, any attempt to amend must be done  
20 by way of a motion to amend.

21 (6) Plaintiff's responses to defendants' answers to his second amended complaint  
22 (Dkts. 68, 71 and 77) are STRICKEN. A response to an answer to a civil complaint is not a

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1 proper pleading and is only permitted when specifically ordered by the Court. *See* Fed. R. Civ.  
2 P. 7(a)(7). The Court sees no need for the responses filed by plaintiff and, thus, those  
3 submissions are properly stricken from the record. Plaintiff will have an opportunity to litigate  
4 the substance of his claims later in this action.

5 (7) The Clerk is directed to send copies of this Order to plaintiff, to counsel for  
6 defendants, and to the Honorable Richard A. Jones.

7 DATED this 10th day of August, 2017.

8   
9 JAMES P. DONOHUE  
10 Chief United States Magistrate Judge